## CHOO YEOH JEE & ORS v. PESURUHJAYA SUKAN

HIGH COURT MALAYA, MELAKA
VAZEER ALAM MYDIN MEERA J
[JUDICIAL REVIEW NO: 25-05-06-2015]
8 MARCH 2016

***ADMINISTRATIVE LAW:*** *Judicial review – Application for – Persatuan Menembak Melaka ('PMM') – Revocation of registration of sports body by Commissioner of Sports – Service of show cause notice vide Pos Laju – Whether mode of service effective – Whether proper service of show cause notice – Failure to collect shipment containing show cause notice – Shipment returned undelivered – Whether PMM denied opportunity to make representations against deregistration – Whether presumption of due service of notice pursuant to s. 12 of Interpretation Acts 1948 and 1967 applied*

***ADMINISTRATIVE LAW:*** *Judicial review – Application for – Persatuan Menembak Melaka ('PMM') – Revocation of registration of sports body by Commissioner of Sports – Statutory notice of revocation (Form 5) – Omission of endnote – Whether invalidated notification – Whether omission had substantial effect on PMM's rights to lodge an appeal – Whether omission curable by s. 62 of Interpretation Acts 1948 and 1967*

***UNINCORPORATED ASSOCIATIONS:*** *Unincorporated associations – Judicial review – Revocation of registration of sports body by Commissioner of Sports – Appeal against revocation to Minister – Application of judicial review pending outcome of Minister's decision – Whether judicial review application premature*

Persatuan Menembak Melaka ('PMM') was registered as a lawful society under s. 7 of the Societies Act 1966. Following the coming into force of the Sports Development Act 1997 ('the Act'), in particular s. 16 of the Act, the respondent registered PMM as a sports body. PMM had used the shooting range at Royal Malaysia Police ('PDRM') Malacca and Pusat Sukan MBMB/MSN belonging to Majlis Sukan Negeri Melaka ('MSNM') for its activities. The respondent received a written complaint from MSNM about PMM. Its complaint, *inter alia*, were that (i) an undischarged bankrupt was allowed to hold office and wholly manage the affairs of PMM; and (ii) PMM was misusing MSNM's shooting range by allowing the use of certain types of firearms and bullets, which were prohibited at that shooting range. Following thereto, the Ketua Lesen Pasukan, PDRM, Kuala Lumpur, on behalf of the Inspector General of Police, notified PMM of the decision of the Inspector General of Police to revoke/cancel the firearms licence issued to PMM. Upon the confirmation of the revocation/cancellation of licence, the respondent issued a notice ('show cause notice') under s. 20(2) of the Act to PMM requesting PMM to show cause within 14 days as to why its registration as a sports body ought not to be cancelled. The show cause notice was dispatched to PMM *via* Pos Laju. As the respondent did not receive any

response from PMM, the respondent decided to revoke the registration of PMM as a sports body pursuant to its powers under s. 20(3) of the Act. The respondent subsequently issued a statutory notice in Form 5 pursuant to reg. 8 of the Sports Development (Registration of Sports Bodies) Regulations 1998 ('Regulations') notifying PMM of the revocation of its registration as a sports body. Form 5 was also dispatched to PPM *via* Pos Laju. Thereafter, PMM appealed to the respondent to reconsider its decision to revoke its registration. PPM also made a written appeal to the Minister as provided in s. 21(1) of the Act. The applicants, without awaiting the outcome of PMM's appeal to the Minister, initiated the present judicial review application to quash the respondent's decision. In support of the application, the applicants contended, amongst others, that PMM did not receive any show cause notice and as such PMM had been deprived of its right to be notified and heard as provided in s. 20(2) of the Act. The applicants further contended that the endnote ('note') had been omitted in Form 5. This omission was a procedural error which breached the Regulations. The issues that arose for determination, *inter alia*, were (i) whether the respondent acted *ultra vires* of its statutory powers; (ii) whether there was any procedural impropriety due to the omission of the note in Form 5; (iii) whether the applicant's application for judicial review was premature.

**Held (dismissing application; each party to bear own costs):**

**(1)** It is trite law that the High Court, when hearing an application for *certiorari* is not sitting in its appellate jurisdiction but merely performing its supervisory jurisdiction. The courts can, by way of judicial review, interfere with an act of an executive authority in three different circumstances, namely; (i) illegality, irrationality, procedural impropriety and proportionality. (paras 22 & 23)

**(2)** Pursuant to ss. 11 and 20 of the Act, the respondent is seized with jurisdiction and powers under statute to revoke the registration of any sports body registered under the Act. Accordingly, the respondent notified PMM of the decision to revoke its registration by issuing a Form 5 notification and served the same to PPM. There was no evidence of the respondent having acted *ultra vires* or in excess of jurisdiction. Therefore, the decision to revoke PMM's registration is not tainted by any illegality for it is strictly in accordance to the statutory powers conferred in the Act. (para 25)

**(3)** The omission of the note in Form 5 did not invalidate the notification as the omission did not have any substantial effect on PMM or its rights nor was it calculated to mislead it. Similarly, the omission of the note did not diminish the rights of PMM to lodge an appeal to the Minister. The note was merely a restatement of the statutory rights of PMM found in s. 21(1) of the Act. The provisions of s. 62 of the Interpretation Acts 1948 and 1967 would cure the omission of the note in the Form 5 issued by the respondent. (paras 28 & 29)

**(4)** There was proper service of the show cause notice by Pos Laju, as the law presumes service to be effected upon dispatch or posting. Thus, *albeit* that the shipment was subsequently returned uncollected/ undelivered, by the act of dispatching the show cause notice to the PMM's secretary, the respondent afforded PMM its statutory mandated opportunity to make representations against the intended deregistration of PMM. Further, the notice of revocation of PMM's registration was also delivered *via* Pos Laju to PMM's Secretary, which was received by the secretary. In the circumstances, the mode of service chosen by the respondent to serve the show cause notice was an effective one and was acceptable. Merely because the earlier show cause letter was not collected by PMM's Secretary, it could not be construed as a denial of PMM's statutory right to be notified and given an opportunity to make its case against deregistration. (para 37)

**(5)** The applicants could not be allowed, in law, to rely on their own fault or shortcoming in not collecting the shipment containing the show cause letter to argue that they had not been given the opportunity envisaged in s. 20(2) of the Act. The presumption of due service of notice as in s. 12 of the Interpretation Acts 1948 and 1967 would apply. It was not the duty of the respondent to ensure due receipt of the show cause notice, when service was done by a mode that is recognised by law, and where presumption of due service would arise following proper posting or dispatch. If such a duty were to be imposed, a recipient may evade service or avoid acceptance of service of such statutory notices, and frustrate the respondent's exercise of statutory powers. In the premise, there was no breach of the procedural provisions in s. 20(2) of the Act. As such, the applicants' allegations of procedural impropriety on the part of the respondent did not hold water. (paras 38 & 39)

**(6)** It is trite law that a decision must be a perverse and devoid of plausible justification if a review is sought on grounds of *Wednesbury* unreasonableness. However, there was no evidence showing the respondent to have acted unreasonably or in an arbitrary manner or having made a decision against the grain of evidence. The decision of the respondent was reasonable in the sense that any reasonable body of person in a similar position would have reached the same decision, specially with PMM's firearms licence being revoked by the Inspector General of Police, being shut out from the MSNM's shooting range and the affairs and management of the sports body being controlled and conducted by an undischarged bankrupt. (para 40)

**(7)** The applicants, having elected to avail themselves of their right of appeal to the Minister under s. 21(1) of the Act must await the Minister's decision. To allow the applicants to attack the decision of the respondent without awaiting the outcome of their appeal to the Minister would amount to allowing the applicants to challenge one stage of the

decision making process, without awaiting the final decision. The court should not allow such piece meal attacks. The final decision in the decision process to revoke registration of a sports body is that of the Minister. Therefore, when an appeal is lodged to the Minister, it would be prudent to await that decision by giving the Minister reasonable time. Otherwise, the legislative intent found in the Act would be defeated and the courts would be usurping the powers of the Minister. As such, the applicants' application was clearly premature. (paras 42 & 43)

**Case(s) referred to:**

*Alliance Bank Malaysia Bhd v. Mukhriz Mahathir & Anor [2006] 2 CLJ 723 HC* ***(refd)***

*Associated Provincial Picture Houses Ltd v. Wednesbury Corp [1948] 1 KB 223* ***(refd)***

*Booi Kim Lee v. YB Menteri Sumber Manusia, Malaysia & Anor [1999] 4 CLJ 121 HC* ***(refd)***

*Council of Civil Services Unions & Ors v. Minister of Civil Service [1985] AC 374* ***(refd)***

*Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 CLJ 333 SC* ***(refd)***

*Harianto Effendy Zakaria & Ors v. Mahkamah Perusahaan Malaysia & Anor [2014] 8 CLJ 821 FC* ***(refd)***

*HSBC Bank Malaysia Bhd v. Menteri Sumber Manusia Malaysia & Ors [2011] 1 LNS 106 HC* ***(refd)***

*Kaneka Paste Polymers Sdn Bhd v. Ketua Pengarah Perhubungan Perusahaan & Ors [2005] 1 LNS 276 HC* ***(refd)***

*Lam Eng Rubber Factory (M) Sdn Bhd v. Pengarah Alam Sekitar, Negeri Kedah dan Perlis & Anor [2005] 2 CLJ 157 CA* ***(refd)***

*M Sentivelu R Marimuthu v. Public Services Commission Malaysia & Anor [2005] 3 CLJ 778 CA* ***(refd)***

*Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tangunggan [1999] 3 CLJ 65 FC* ***(refd)***

*Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia, Malaysia & Anor [1998] 1 CLJ 227 CA* ***(refd)***

*Minister Of Labour & The Government Of Malaysia v. Lie Seng Fatt [1990] 1 CLJ 1103; [1990] 1 CLJ (Rep) 195 SC* ***(refd)***

*Perbadanan Pembangunan Pulau Pinang v. Chong Ah Yok [1993] 2 CLJ 351 HC* ***(refd)***

*R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC* ***(refd)***

*Syed Mubarak Syed Ahmad v. Majlis Peguam Malaysia [2000] 3 CLJ 659 CA* ***(refd)***

*Tan Kim Hock v. Huang Yann Chong [1999] 1 CLJ 857 CA* ***(refd)***

**Legislation referred to:**

Industrial Relations Act 1967, s. 9(5)

Interpretation Acts 1948 and 1967, ss. 12, 62

Rules of Court 2012, O. 53 r. 3(2)

Societies Act 1966, s. 7

Sports Development (Registration of Sports Bodies) Regulations 1998, reg. 8

Sports Development Act 1997, ss. 10, 11, 12(1), (2), 16, 17, 20(1)(d), (e), (2), 21(1)

*For the plaintiffs - Sheena Marissa Sinnappah (Valerie Ann Fernando with her); M/s Sheena Valerie & Partners*

*For the defendant - Muzila Muhamed Arsad; FC*

*Reported by Sandra Gabriel*

## JUDGMENT

**Vazeer Alam Mydin Meera J:**

### The Application

**[1]** This is an application by the applicants for judicial review, seeking *inter alia*, the following reliefs:

(i) an order of *certiorari* to quash the decision of the respondent dated 11 March 2015 revoking the registration of Persatuan Menembak Melaka ("PMM") as a sports body under the Sports Development Act 1997 ("Act 576");

(ii) a declaration that the aforesaid order of the respondent dated 11 March 2015 is null, *ultra vires* and void and has no effect;

(iii) an order for stay of the respondent's aforesaid decision pending disposal of this application;

(iv) cost; and

(v) other consequential reliefs deemed appropriate by the court.

**[2]** *Ex parte* leave was granted and thereafter the applicants filed the substantive application for judicial review. After hearing parties, I dismissed the substantive application for the following reasons.

### The Facts

**[3]** The first to fourth applicants are the office-bearers of PMM, whilst the fifth applicant is PMM's Captain. The applicants have filed this judicial review application in their individual capacity as well as for and on behalf of PMM.

**[4]** PMM, also known as the Malacca Shooting Association, was registered on 16 August 1966 as a lawful society under s. 7 of the Societies Act 1966. The objects for which PMM was formed included, *inter alia*, the encouragement and promotion of clay pigeon shooting, pistol and revolver shooting, rifle shooting, target shooting, and all other kinds or forms of shooting to foster mutual goodwill, understanding and friendship by providing opportunities for members to share in social, sporting and recreational activities of all kinds. And towards achieving this object, PMM, as a state level organisation, sought affiliation with such national and international associations or bodies whose objects are similar to those of PMM.

**[5]** Act 576, which came into effect on 1 January 1998, in s. 16, provides that:

> Any sports body registered under the Societies Act 1966 shall. on the date of coming into force of this Act, cease to be registered under the Societies Act 1966 and shall, within five months thereof, apply to the Commissioner

A to be registered under this Act to carry out any sporting activity; and such sports body shall continue to operate as a sports body until notified otherwise by the Commissioner.

The provisions of s. 16 of Act 576 would affect PMM being a sports body registered under the Societies Act 1966. Subsequently on 29 May 1998, the B respondent, as the Commissioner of Sports, registered PMM as a sports body pursuant to the provisions of s. 17 of Act 576, and issued a certificate of registration subject to the terms contained therein. It is pertinent to refer to several of these conditions, namely:

2. PENGGANTUNGAN DAN PEMBATALAN

C

Pesuruhjaya Sukan boleh membatalkan atau menggantung pendaftaran badan sukan jika Pesuruhjaya Sukan berpuashati bahawa badan sukan melakukan perkara di bawah perenggan (a), (b), (c), (d), (e), (f) dan (g) subseksyen (1) seksyen 20 Akta Pembangunan Sukan 1997.

3. MAKLUMAT YANG KENA DIBERI

D

Tiap-tiap badan sukan hendaklah menghantarkan kepada Pesuruhjaya Sukan dalam masa 28 hari selepas mengadakan Mesyuarat Agung tahunannya:'

… …

E

(ii) Suatu senarai yang benar dan lengkap mengenai pemegang-pemegang jawatan.

… …

(v) Apa-apa lain maklumat sebagaimana yang dikehendaki oleh Pesuruhjaya Sukan dari masa ke semasa.

F

These conditions, which are merely the reiteration of statutory provisions in Act 576 is of relevance to the adjudication of the issues raised in this application.

**[6]** According to the applicants, PMM presently has 914 members of G whom 600 are 'Associate and Ordinary Members' and 314 are 'Life Members'. PMM is affiliated to the National Shooting Association of Malaysia ("NSAM"), which in turn is affiliated to the International Shooting Sport Federation ("ISSF"). The NSAM is the sole national shooting sports body recognised by the Olympic Council of Malaysia. PMM carries out H shooting sports activities and competitions in the State of Malacca that are approved by the NSAM and the ISSF. PMM is actively involved in the sports of shooting.

**[7]** PMM had initially used the Royal Malaysia Police ("PDRM") shooting range in Malacca for its activities. Subsequently, the shooting range I at the Pusat Sukan MBMB/MSN, Ayer Keroh, Malacca, belonging to the Majlis Sukan Negeri Melaka ("MSNM"), was used for PMM's activities with the approval of the MSNM.

**[8]** Sometime in April 2014, the respondent received a written complaint dated 14 April 2014 from the MSNM about PMM and in particular the following matters were brought to the attention of the respondent:

(a) an undischarged bankrupt was allowed to hold office and wholly manage the affairs of PMM;

(b) PMM was impeding the development of the sports of shooting and SUKMA XVII; and

(c) PMM was misusing the MSNM's shooting range at Ayer Keroh, by allowing the use of certain types of firearms and bullets, which were prohibited at that shooting range.

**[9]** Sometime in May 2014, the MSNM closed its shooting range at Ayer Keroh for the use of PMM and PMM's members were prohibited from using that shooting range.

**[10]** Sometime in July 2014, *vide* letter dated 1 July 2014, the Pegawai Turus Pelesenan Kontinjen, PDRM, Melaka, wrote to the PMM's then President, Mr Tan Kong Yap, stating that their investigations had revealed that there were several breaches of conditions of usage of the MSNM shooting range at Ayer Keroh by PMM, particularly breaches involving the type of firearms used at the shooting range, which gave rise to issues of public safety. PDRM in that letter of 1 July 2014 gave one month to PMM to show cause as to why the firearms licence issued to PMM ought not to be revoked or cancelled.

**[11]** Mr Tan Kong Yap, as President of PMM, replied that show cause notice *vide* letter dated 10 July 2014. Sometime in November 2014, *vide* letter dated 24 November 2014 addressed to Mr Tan Kong Yap as President of PMM, the Ketua Lesen Pasukan, PDRM, Bukit Aman, Kuala Lumpur, on behalf of the Inspector General of Police notified PMM of the decision of the Inspector General of Police to revoke/cancel the firearms licence issued to PMM and PMM was required under law to surrender all its firearms and bullets to the authorities. However, according to the applicants, the revocation of PMM's firearms licence did not affect the individual firearms licences of members of PMM who had been issued with such individual licences. These members were free to carry out any shooting sports activities at any authorised shooting ranges or premises. However, it must be gainsaid that a large number of shooting sports enthusiasts who were without firearms licences were prevented from taking part in any such sports activities organised by PMM. It must also be noted that such revocation would undoubtedly hamper the promotion and organisation of sports shooting events by PMM and to be a State Level Shooting Sports Association.

**[12]** The respondent, *vide* letter dated 6 November 2014 wrote to PMM asking for explanation on the complaint/issues raised by MSNM in their letter of 14 April 2014. PMM replied and gave their explanation *vide* letter dated 24 November 2014.

**[13]** The respondent then *vide* letter dated 5 December 2014 requested PMM to furnish proof of sanction or consent from the Director General of Insolvency Malaysia for the appointment of Mr Richard Tan Pong Giat, an undischarged bankrupt, as PMM's Club Manager. PMM did not furnish such proof to the respondent. It must be noted that under s. 12(1) of Act 576, the respondent has powers to request for such information. Section 12(1) reads:

> (1) The Commissioner may direct any person to disclose to the Commissioner any information and produce any report and document within his knowledge or in his possession as may be deemed necessary for the purpose of exercising any of the powers and functions of the Commissioner under this Act and he may further direct the attendance before him of any person whom he considers necessary to enable him to carry out his powers and functions under this Act.

And s. 12(2) of Act 576 makes it an offence punishable by fine or imprisonment if any person fails to comply with the direction of the Commissioner of Sports under sub-s. (1). Clearly, the failure of PMM to furnish documentary proof of the sanction of the Director General of the Director General of Insolvency sanctioning the employment of an undischarged bankrupt by PMM was a very serious breach of the governing statute.

**[14]** The respondent then received a letter dated 14 January 2015 from MSNM requesting the respondent to consider the revocation of PMM's registration as a sports body, *inter alia*, on the following grounds:

(a) the revocation/cancellation of PMM's firearms licence by the Inspector General of Police on grounds of public safety;

(b) PMM does not have a shooting range to carry out its activities;

(c) the use of unauthorised firearms and bullets at the MSNM shooting range, that has caused destruction to the shooting range and disrupted *bona fide* athletes who used that shooting range for training; and

(d) the involvement of an undischarged bankrupt in management and affairs of PMM.

**[15]** The respondent then wrote a letter dated 28 January 2015 to PDRM seeking confirmation on the revocation of PMM's firearms licence. PDRM replied *vide* letter dated 2 February 2015 confirming that PMM's firearms licence had indeed been revoked/cancelled by the Inspector General of Police and that as a consequence PMM is to surrender all their firearms and bullets to the authorities.

**[16]** The respondent had in the meantime also received complaints from members of PMM on alleged mismanagement of the sports body and also in respect of the calling and conduct of the General Meeting of PMM by an undischarged bankrupt, who is alleged to fully control the affairs of PMM.

**[17]** The respondent then issued a notice dated 12 February 2015 under s. 20(2) of Act 576 to PMM requesting PMM to show cause to the contrary within 14 days as to why its registration as a sports body ought not to be cancelled under s. 20(1)(d) & (e) of Act 576. The aforesaid notice was dispatched to PMM *via* Pos Laju. The relevant part of the show cause notice reads:

> 2. Berikutan daripada beberapa aduan yang diterima mengenai Persatuan Menembak Negeri Melaka (PMNM), pejabat ini telah pun membuat siasatan dan mendapatkan dokumen maklumat daripada pihak yang berkaitan serta membuat semakan terhadap perkara yang dibangkitkan oleh pengadu.
>
> 3. Melalui penelitian tersebut, pejabat ini berpendapat bahawa PMNM:
>
> (a) telah gagal menjalankan fungsi dan peranannya seperti yang diperuntukkan dalam Fasal 3 Perlembagaan untuk mewakili sukan menembak;
>
> (b) bertindak menghindar pembangunan sukan menembak; dan
>
> (c) gagal mematuhi arahan Pesuruhjaya Sukan di bawah Seksyen 12 Akta Pembangunan Sukan (APS) 1997 untuk mengemukakan maklumat yang dikehendaki.
>
> 4. Berdasarkan kegagalan PMNM seperti yang dinyatakan di atas, Pejabat ini mendapati pendaftaran PMNM boleh dibatalkan di bawah subseksyen 20(1)(d) & (e) APS 1997 dengan alasan bahawa PMNM bukan lagi entiti yang patut dan wajar didaftarkan untuk mewakili sukannya di Malaysia. Selaras dengan subseksyen 20(2) APS 1997, pihak tuan diberi peluang untuk mengemukakan sebab-sebab menentang pembatalan pendaftaran PMNM. Pihak tuan diminta untuk mengemukakan sebab-sebab berkenaan dalam tempoh empat belas (14) hari dari tarikh surat ini.

**[18]** The respondent did not receive any response from PMM to that show cause notice within the specified period. Upon the expiry of the 14 days period, the respondent made a decision to revoke registration of PMM as a sports body in exercise of the respondent's powers under s. 20(1) of Act 576. The respondent then issued a statutory notice in the form of a borang 5 pursuant to reg. 8 of the Sports Development (Registration of Sports Bodies) Regulations 1998 dated 11 March 2015 notifying PMM of the revocation of its registration as a sports body as the respondent found PMM was no longer a fit and proper entity to be registered under Act 576. This borang 5 was served on PMM under cover of the respondent's letter dated 12 March 2015, which was also dispatched *via* Pos Laju.

**[19]** Thereafter, PMM *vide* letter dated 23 March 2015 appealed to the respondent to reconsider the decision to revoke its registration. The respondent did not respond to this appeal. Statutorily the appeal from a decision of the respondent lies with the Minister. The applicants then met Encik Mohd Hata bin Saliman, the Ketua Penolong Pesuruhjaya Sukan Malaysia, who advised the applicants that the appeal against the respondent's decision ought to make to the Minister, as is provided in s. 21(1) of Act 576, and not the respondent. PMM then made a written appeal to the Minister *vide* letter dated 4 May 2015. The applicants, without awaiting the outcome of PMM's appeal to the Minister, initiated this judicial review on 10 June 2015 by filing their *ex parte* application for leave to quash the respondent's decision. Leave was granted and thus the substantive application, which I heard dismissed.

**Grounds For Judicial Review**

**[20]** The grounds for application for judicial review are as contained in the statement pursuant to O. 53 r. 3(2) of the Rules of Court 2012 dated 10 June 2015. In essence, the applicants' application is premised on the following two main grounds, namely, that:

(i) the respondent's decision is tainted with procedural impropriety; and

(ii) the respondent committed an error of law in having acted *ultra vires* her powers in revoking PMM's registration as a sports body.

**[21]** The respondent whilst denying these allegations, has raised the issue of premature application; in that the applicants having chosen to lodge an appeal to the Minister ought to wait for the Minister's decision on the appeal before filing this judicial review application.

**The Role Of Court In Judicial Review**

**[22]** It is trite law that the High Court when hearing an application for *certiorari* is not sitting in its appellate jurisdiction but merely performing its supervisory jurisdiction. See *Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia, Malaysia & Anor* [1998] 1 CLJ 227; [1998] 1 MLJ 305 CA; *Minister Of Labour & The Government Of Malaysia v. Lie Seng Fatt* [1990] 1 CLJ 1103; [1990] 1 CLJ (Rep) 195; [1990] 2 MLJ 9 SC. Further, in *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 FC; and *Booi Kim Lee v. YB Menteri Sumber Manusia, Malaysia & Anor* [1999] 4 CLJ 121; [1999] 3 MLJ 515 HC, the courts adopted the *dicta* of Lord Diplock in *Council of Civil Services Unions & Ors v. Minister of Civil Service* [1985] AC 374 and stated that the courts can, by way of judicial review, interfere with an act of an executive authority in generally three different circumstances, namely:

(i) Illegality - that is when the authority concerned has been guilty of an error of law in its action, ie, purporting to exercise a power it does not have and/or acting *ultra vires* its powers. This allows the courts to

scrutinise such decisions not only for process, but also for substance. See *Syed Mubarak Syed Ahmad v. Majlis Peguam Malaysia* [2000] 3 CLJ 659; [2000] 3 AMR 3048; [2000] 4 MLJ 167; *Lam Eng Rubber Factory (M) Sdn Bhd v. Pengarah Alam Sekitar, Negeri Kedah dan Perlis & Anor* [2005] 2 CLJ 157; [2005] 2 AMR 471.

(ii) Irrationality - that is when the authority exercises its power in such an unreasonable manner that the decision is so outrageous that it defies logic and that a person having put his mind to the question could not have arrived at such a decision, ie, the *Wednesbury* unreasonableness principle - see *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223.

(iii) Procedural impropriety - that is the authority's failure to observe procedural rules expressly laid down in the legislative instrument by which its jurisdiction is conferred, the breach of which may or may not involve denial of natural justice. See *M Sentivelu R Marimuthu v. Public Services Commission Malaysia & Anor* [2005] 3 CLJ 778; [2005] 5 MLJ 393.

**[23]** Lord Diplock mentioned 'proportionality' as a possible fourth ground of review and the Federal Court in *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 FC said that such a principle is recognised as a general principle of English law, and when applied, it enables the court to review an impugned decision for substance as well as process. Indeed, in industrial and employment law the principle of proportionality is well recognised. See *Harianto Effendy Zakaria & Ors v. Mahkamah Perusahaan Malaysia & Anor* [2014] 8 CLJ 821 FC, and has been a ground for judicial review.

*Issue 1: Whether The Respondent Acted Ultra Vires The Statutory Powers*

**[24]** The Minister appoints the Commissioner of Sports under s. 10 of Act 576 and Commissioner's powers are prescribed under s. 11, which, *inter alia*, provides that:

(1) The Commissioner shall have the following powers:

… …

(c) to revoke or suspend the registration of a sports body.

Further, s. 20 of Act 576 provides that:

(1) The Commissioner may revoke or suspend the registration of a sports body if the Commissioner is satisfied that such sports body:

(a) has been registered as a result of a fraud or a mistake or misrepresentation in any material particular;

(b) has failed to comply with any of the conditions imposed by the Commissioner under section 18;

A (c) has contravened any provision of this Act or any regulations made thereunder;

(d) is inactive or is no longer a fit and proper entity to be registered to represent its sport in any State or in Malaysia;

(e) is hindering the development of the particular sport and it is in the B public interest to revoke or suspend its registration;

(f) has failed or neglected to remedy any malpractice, misconduct or irregularity on the part of its office bearers or its members within the period specified in the written notice given by the Commissioner; or

C (g) is inactive, uncooperative or obstructive in the implementation of the regulations, policies or guidelines made under or pursuant to powers under this Act.

(2) Before revoking or suspending the registration of a sports body under subsection (1), the Commissioner shall give the sports body an opportunity to submit reasons, if any, against the proposed revocation or D suspension.

**[25]** Therefore, it is clear from a reading of ss. 11 and 20 of Act 576 that the respondent is seized with jurisdiction and has powers under statute to revoke registration of any sports body registered under the Act. Indeed PMM has been notified of this power as one of the conditions in the certificate of E registration. The respondent has, in the show cause notice dated 12 February 2015, alluded to the provisions in s. (20)(1)(d) & (e) of Act 576 in invoking her statutory power. And in accordance to s. 20(2) of the Act, the respondent gave PMM 14 days to show cause to the contrary as to why its registration ought not to be revoked. When the respondent did not get any response from F PMM within the specified period, she exercised her statutory power and revoked its registration. The Sports Development (Registration Of Sports Bodies) Regulations 1998 provides in reg. 8 that:

The notification of the decision of the Commissioner to revoke or suspend the registration of a sports body under section 20 of the Act shall G be in Form 5.

Accordingly, the respondent notified PMM of her decision to revoke its registration by issuance of a form 5 notification dated 11 March 2015 and served the same under cover of letter dated 12 March 2015 by Pos Laju. Therefore, I do not find any evidence of the respondent having acted *ultra* H *vires* or in excess of jurisdiction. The decision to revoke PMM's registration is not tainted by any illegality for it is strictly in accordance to the statutory powers conferred in Act 576.

*Issue 2: Whether There Is Any Procedural Impropriety*

I **[26]** The statutory form 5 referred to in the aforesaid reg. 8 contains an endnote that reads:

Note:

Under section 21 of the Sports Development Act 1997, any sports body aggrieved by the decision of the Commissioner may appeal against the decision to the Minister within thirty days from the date of the notification of the decision and on payment of the prescribed fee.

However, in the form 5 dated 11 March 2015 issued by the respondent, that endnote has been omitted. Learned counsel for the applicants submits that this omission is a procedural error that breaches reg. 8 of the Sports Development (Registration of Sports Bodies) Regulations 1998, which would invite correction by this court.

**[27]** The learned Senior Federal Counsel (SFC) appearing for the respondent submits that the omission of the note in the form 5 does not vitiate the revocation of the PMM as the note merely restates the statutory right of a sports body to appeal to the Minister against the decision of the respondent to revoke its registration. This statutory right is found in s. 21(1) of Act 576 that reads:

(1) Any sports body aggrieved by a decision of the Commissioner:

(a) in refusing to register such sports body;

(b) in imposing conditions on the registration of such sports body; or

(c) in revoking or suspending the registration of such sports body,

may, within thirty days from the date of the notification of the decision of the Commissioner, appeal to the Minister whose decision thereon shall be final.

**[28]** The learned SFC further submits that any deviation from a prescribed form shall not invalidate that form if such deviation has no substantial effect and is not calculated to mislead. In this regard learned counsel for the respondent relies on s. 62 of the Interpretation Acts 1948 and 1967 that reads:

Any written law prescribing a form shall be deemed to provide that an instrument or other document purporting to be in that form shall not be invalidated by reason of any deviation from the form if the deviation has no substantial effect and is not calculated to mislead.

I am inclined to accept the contention of the learned SFC that the omission of the note in the form 5 does not invalidate the notification as the omission did not have any substantial effect on PMM or its rights nor was it calculated to mislead it. In *Perbadanan Pembangunan Pulau Pinang v. Chong Ah Yok* [1993] 2 CLJ 351 HC, Mohamed Dzaiddin bin Haji Abdullah J (as he then was) in dismissing an argument that the non-compliance of the statutory format of the originating summons issued in that case vitiated the initiation of proceedings held that:

A There is nothing misleading in the originating summons which would tend to cause any substantial deviation from the original format. The deviation or omission to strictly follow Form 8A of the Rules is cured by Interpretation Act 1967, s. 62.

**[29]** Similarly, I do not find the omission of the prescribed note in the form B 5 issued by the respondent to have in anyway diminished the rights of PMM to lodge an appeal to the Minister. The note is merely a restatement of the statutory rights of PMM found in s. 21(1) of the Act. In fact, when the applicants met to discuss the matter with the respondent's officer in regards their appeal to the respondent to reconsider her decision, they were advised C to lodge an appeal to the Minister instead. The applicants accepted this advice and subsequently lodged their appeal to the Minister, which is still pending the Minister's decision. In the circumstance, I find that the provisions of s. 62 of the Interpretation Acts 1948 and 1967 would cure the omission of the note in the form 5 issued by the respondent.

D **[30]** The applicants further contend that PMM did not receive the show cause notice dated 12 February 2015 and as such PMM has been deprived of its right to be notified and heard as provided in s. 20(2) of Act 576. In fact, this is the primary ground on which this application for judicial review is grounded.

E **[31]** The respondent denies the allegation that PMM was denied their rights provided in s. 20(2) of the Act. The respondent asserts that the show cause notice dated 12 February 2015 was dispatched to PMM *via* Pos Laju and states that this is sufficient to satisfy the requirement of law in s. 20(2) of Act 576. To appreciate the contrary position and arguments of the applicants and F respondent it would be apposite to refer to the provisions in s. 20(2) of the Act, which reads:

> (2) Before revoking or suspending the registration of a sports body under subsection (1), **the Commissioner shall give the sports body an opportunity to submit reasons**, if any, against the proposed revocation G or suspension.
>
> (emphasis added)

**[32]** Now, a literal interpretation of s. 20(2) of the Act would mean that the statute imposes a duty upon the respondent to give the sports body an opportunity to submit reasons against the proposed revocation of H registration. The statute does not provide that the sports body must be heard before the respondent makes such a decision, but merely an opportunity to submit reasons.

**[33]** The affidavit evidence shows that the show cause notice dated I 12 February 2015 was dispatched to PMM's Secretary on 13 February 2015 *via* Pos Laju bearing waybill number EM016260414MY from the Pusat Pos Laju Cheras, Kuala Lumpur. The shipment arrived at the Pusat Pos Laju Melaka on 14 February 2015. The computer tracking of the shipment shows

that there was an unsuccessful attempt by Pos Laju to deliver the shipment to PMM's Secretary on 14 February 2015 at the address stated thereon. Thereafter, the shipment was left at the self-collection counter of the Pusat Pos Laju Melaka from 14 February 2015 till 28 February 2015, ie, for a period of 14 days for PMM's Secretary to collect the same. However, the Secretary of PMM failed to collect the shipment from the self-collection counter of the Pusat Pos Laju Melaka, as a result of which it was dispatched out from the Pusat Pos Laju Melaka on 2 March 2015 to its station of origin at Pusat Pos Laju Cheras. Pos Laju Cheras then returned the shipment to the respondent's office at Pusat Akuatik Negara, Kompleks Sukan Negara, Bukit Jalil, Kuala Lumpur, on 3 March 2015, as undelivered or uncollected by addressee.

**[34]** Learned SFC argues that the respondent's aforesaid act in dispatching the show cause letter to PMM's Secretary means that she has given sufficient opportunity to PMM to submit reasons against the proposed revocation of registration. Learned SFC submits that the respondent has done all that which is reasonable in the circumstance to have the show cause letter dispatched to PMM *via* Pos Laju and that it cannot be the requirement of law that the respondent shall ensure receipt of the show cause letter by PMM.

**[35]** The Act 576 is silent as to the manner in which any notice is to be served on a sports body by the respondent. To cover this lacuna, learned SFC seeks to rely on s. 12 of the Interpretation Acts 1948 and 1967 that reads:

> Where a written law authorises or requires a document to be served by post, then, until the contrary is proved, service:
>
> (a) shall be presumed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document; and
>
> (b) shall be presumed to have been effected at the time when the letter would have been delivered in the ordinary course of the post.

The learned SFC argues that the show cause notice was properly addressed and dispatched by Pos Laju, which is akin to registered post, and that it was available for self-collection at the Pusat Pos Laju Melaka self-collection counter from 14 February 2015. Counsel further argues that the service of the show cause notice became effective when it was dispatched to PMM's Secretary on 13 February 2015, and that it was entirely the fault of PMM in not collecting the notice from the self-collection counter.

**[36]** I am inclined to accept the argument of the learned SFC. In *Tan Kim Hock v. Huang Yann Chong* [1999] 1 CLJ 857; [1999] 1 MLJ 343 the Court of Appeal in construing the issue of when service is deemed effected under s. 12 of the Interpretation Acts 1948 And 1967 held as follows:

> It is clear to us that when there is evidence of posting, it shall be presumed to have been effected at the time when the letter would have been delivered in the ordinary course of the post. This is what the sessions

court judge concluded. Thus in the case of *Abdul Ghaffar v. Perbadanan Pembangunan Bandar* [1986] 2 MLJ 158, Harun J (as he then was) when he addressed his mind to a notice to quit at pp. 158-159, said:

> The respondent contends that the notice to quit is good because it took effect the moment it was put in the post on 30 January 1982. The question then is where a notice to quit is delivered through the post, when does it become effective - time of posting or time of receipt.
>
> In *Papillon v. Brunton* (1860) 157 ER 1285 at p 1286, Pollock CB held 'that in the case of a notice to quit putting it into the post office is sufficient, and that the party sending it is not responsible for its miscarriage'.
>
> In *Gresham House Estate Co v. Rossa Grande Gold Mining Co* [1870] WN 119, it was held that if a letter properly directed, containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached its proper destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed.
>
> In my view taking these two authorities together, a notice to quit sent by registered post is effective at the time when the notice would have been delivered in the ordinary course of the post.

As such, we are of the view that the learned sessions court judge, whose decision was affirmed by the learned High Court judge, came to the correct decision that the evidence of posting is good evidence of service on the appellant.

**[37]** If analogous reasoning were applied to the present case, it would seem that there is proper service of the show cause notice, as the law presumes service to be effected upon dispatch or posting. Thus, *albeit* that the shipment was subsequently returned uncollected/undelivered, by the act of dispatching the show cause notice to the PMM's Secretary, the respondent would have afforded PMM its statutory mandated opportunity to make representations against the intended deregistration of PMM. The show cause notice was returned to the respondent's office on 3 March 2015, ie, 18 days after dispatch, as result of the failure of PMM's officers to collect the same from the self-collection counter. The Secretary of PMM has not given any reasons for his failure to collect the show cause notice from the self-collection counter as Pusat Pos Laju Melaka. It would be worth noting that the notice of revocation of PMM's registration dated 11 March 2015 was delivered under cover of the respondent's letter dated 12 March 2015 also *via* Pos Laju to PMM's Secretary, which was received by the secretary. So the mode of service chosen by the respondent to serve the show cause notice was an effective one and is thus acceptable. Thus, I am of the view that merely because the earlier show cause letter was not collected by PMM's Secretary cannot be construed as a denial of PMM's statutory right to be notified and given an opportunity to make its case against deregistration.

**[38]** The show cause notice was redelivered to the respondent only after the lapse of 14 days period that was given in the said notice for PMM to show cause contrary to the respondent's proposed intention to deregister PMM. The respondent not having received any representation to the show cause notice proceeded to exercise her statutory powers to revoke PMM's registration. The applicants cannot be allowed in law to rely on their own fault or shortcoming in not collecting the shipment containing the show cause letter to argue that they have not been given the opportunity envisaged in s. 20(2) of the Act. In the circumstance, I am of the opinion that the presumption of due service of notice as in s. 12 of the Interpretation Acts 1948 and 1967 would apply. In this regard, I accept the respondent's contention that it is not the duty of the respondent to ensure due receipt of the show cause notice, when service is done by a mode that is recognised by law, and where presumption of due service would arise following proper posting or dispatch. See *Alliance Bank Malaysia Bhd v. Mukhriz Mahathir & Anor* [2006] 2 CLJ 723; [2006] 4 MLJ 451. To impose such a duty on the respondent would indeed be onerous. If such a duty were to be imposed, a recipient may evade service or avoid acceptance of service of such statutory notices, and frustrate the respondent's exercise of statutory powers, which may very well be the case here seeing that the show cause notice was not collected for a period of 14 days from the self-collection counter, and no reasons have been given for that failure.

**[39]** In any event, I find that prior to the issuance of the show cause notice, the respondent has been in correspondence with PMM for several months as regard the same issues and complaints raised in the show cause notice of 12 February 2015. In fact, the respondent had previously requested explanation from PMM as regards the complaints of mismanagement of the sports body and the revocation/cancellation of its firearms licence by the Inspector General of Police that had been raised by the MSNM. Obviously, the respondent was dissatisfied with the answers and explanation provided by PMM, thus the notice to show cause, and the eventual deregistration. Therefore, I find that this is not a case where the respondent, out of the blue, and without any basis, having revoked PMM's registration. PMM had been given ample opportunity to address the concerns of the respondent as regards these issues, which formed the basis for the respondent's decision to revoke its registration. In the premise, I find that there is no breach of the procedural provisions in s. 20(2) of the Act. And as such the applicants' allegations of procedural impropriety on the part of the respondent do not hold water.

**[40]** In the circumstance, I find that the decision of the respondent is reasonable in the sense that any reasonable body of person in a similar position would have reached the same decision; what more with PMM's firearms licence being revoked by the Inspector General of Police, and being shut out from the MSNM's shooting range, and the affairs and management of the sports body being controlled and conducted by an undischarged

bankrupt. It is trite law that a decision must be a perverse and devoid of plausible justification if the review is sought on grounds of *Wednesbury* unreasonableness. See *Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333; [1994] 2 MLJ 114. However, I do not find any evidence showing the respondent to have acted unreasonably or in an arbitrary manner or having made a decision against the grain of evidence.

*Issue 3: Premature Application*

**[41]** The applicants aver that they had made an appeal against the respondent's decision to the Minister under s. 21(1) of the Act *vide* letter dated 4 May 2015. As at the date of filing of this judicial review application, and at the leave stage, as well as at the substantive hearing, the Minister had not given his decision on the appeal. Thus, the respondent contends that this judicial review application is premature, and is an attack by the applicants on the stages of the decision process, which the law does not countenance.

**[42]** I agree with submissions of learned counsel for the respondent that the applicants having elected to avail themselves of their right of appeal to the Minister under s. 21(1) of the Act must await the Minister's decision. The applicants ought to give reasonable time to the Minister to decide on the appeal. The appeal was made on 4 May 2015 and a month later, ie, on 10 June 2015, the applicants filed this judicial review application. In *HSBC Bank Malaysia Berhad v. Menteri Sumber Manusia, Malaysia & Ors* [2011] 1 LNS 106, the court held that an application for judicial review made before any decision on recognition is made by the Minister under s. 9(5) of the Industrial Relations Act (Act 177) is premature and merely serves to fragment the decision making process and attacks the process by stages. Similarly, in *Kaneka Paste Polymers Sdn Bhd v. Ketua Pengarah Perhubungan Perusahaan & Ors* [2005] 1 LNS 276, the court held that not all decisions made under statutory authority is subject to judicial review. In that case the applicants applied to quash the decision of the Director General of Trade Unions on the issue of competency under s. 9 of Act 177. The court in refusing leave and dismissing the application held that:

> To entertain the applicant's application would hamper the smooth workings of a claim for recognition as it allows piece meal attacks at every stage of the decision process.

**[43]** Similarly, to allow the applicants to attack the decision of the respondent without awaiting the outcome of their appeal to the Minister would amount to allowing the applicants to challenge one stage of the decision making process, without awaiting the final decision. And the court should not allow such piece meal attacks. The final decision in the decision process to revoke registration of a sports body is that of the Minister; and when an appeal is lodged to the Minister, it would be prudent to await that decision by giving the Minister reasonable time. Otherwise, the legislative

intent found in Act 576 would be defeated; and the courts would be usurping the powers of the Minister. As such, I find that the applicants' application is clearly premature.

**[44]** Further, the general principle is that the availability of alternative remedies is one of the discretionary bars upon which the court may in the exercise of its discretion, or as a matter of evaluation, decline relief. See *R Ramachandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 AMR 433; [1997] 1 MLJ 145; *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tangunggan* [1999] 3 CLJ 65; [1999] 3 MLJ 1. Since the applicants' appeal is pending decision of the Minister, I am of the opinion that the applicants ought to exhaust this alternative remedy before seeking intervention of the court. Any intervention by the court at this juncture would go against the legislative intent and scheme in Act 576, which provides for an appeal to the Minister from the decision of the respondent.

**[45]** In the final analysis, I find that there are no merits in the application. Wherefore, I dismissed the application. I also ordered each party to bear their own cost.